IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 996 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTILAL CHIMANLAL MEHTA - Appellant
Versus
ANILKUMAR GIRISHBHAI RANA & 1 - Respondents

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Appearance :
MR BR SHAH for Appellant :
NOTICE SERVED for Respondent : 1,
MR. M.A. PATEL,LD. APP for Respondent: 2.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 10/11/2006

ORAL JUDGMENT

1. The Bharuch Nagar Palika through its Octroi Clerk Shri. Jayantilal Chimanlal Mehta has preferred this appeal under Section 378 of the

Criminal Procedure Code, 1973 (hereinafter referred to as the 'Code'), challenging the judgment & order of acquittal dated 30/4/1991 passed by learned JMFC, Bharuch in Criminal Case No. 293 of 1991 acquitting the respondent no.1, original accused from the offence punishable under Section 125 of the Gujarat Municipalities Act, 1963.

2. This Court (Coram: R.D. Vyas, J) granted leave and admitted the appeal on 7/9/1993, and now it has come up for final disposal.

3. This Court has perused the record & proceedings and the judgment of acquittal in detail. The case of the prosecution was that the accused / present respondent no.1 had attempted to bring within the municipal limits the goods namely footwares and socks without paying octroi and he was interpreted and leviable octroi was recovered from him. The sanction for prosecution was accorded to the complainant Shri. J.C. Mehta, Octroi Clerk, Bharuch and accordingly complaint was filed, which came to be registered as Criminal Complaint No. 293 of 1991.

4. It is pertinent to note that the complaint contains averments that the accused was intercepted at 11.00 O' Clock in the night of 10/10/1990 while he had alighted from Gandhidham Express along with footwares and socks valued

worth Rs.4833/- and Rs.2000/-. The octroi was recovered from him right at that time. The statement of the accused purported to have been recorded at that time is also produced along with the complaint. However in the deposition the complainant has stated that the accused was intercepted on 10/10/1989 and the statement which is sought to be relied upon by the prosecution was recorded in presence of Singwawala, who had not been named as witness and examined by the prosecution. This discrepancy in the complaint of the complainant who had no knowledge of the incident and the fact that the statement which is sought to be relied upon was recorded by the concerned clerk Shri. Singwawala had not been named as witness has considered serious lacuna in the case of the prosecution by the trial court and, therefore, the order of acquittal is recorded.

5. This Court is of the considered view that the order of acquittal is just and proper and, therefore, the same does not call for any interference in the present acquittal appeal. The appeal, therefore, deserves to be dismissed and is accordingly dismissed.

[S.R. BRAHMBHATT, J]

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